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COMMITTEE AGAINST TORTURE

Thirteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 197th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 11 November 1994, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.197/Add.1.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of the Czech Republic (CAT/C/21/Add.2)

1. At the invitation of the Chairman, Mr. Karabec (Czech Republic) took a place at the Committee table.

2. Mr. KARABEC (Czech Republic) began by recalling that the Czech delegation had submitted a new initial report, because the original initial report had been submitted (in November 1991) by the delegation of the former Czech and Slovak Federal Republic, which had since been dissolved. On 19 January 1993, the Czech Republic had become a member of the United Nations and had succeeded to all human rights instruments that had been binding on the Czech and Slovak Federal Republic.

3. With respect to the original initial report of November 1991, the Committee had recommended that the offence of torture and other cruel or degrading treatment be incorporated in the criminal code; that penitentiary staff, medical doctors, police and lawyers be made familiar with the provisions of the Convention; and that the next report include detailed information on how the relevant legislation had been brought into line with the provisions of the Convention.

4. The absence of a specific definition of the offence of torture and other cruel, inhuman or degrading treatment or punishment had since been remedied: at the end of 1993, Act No. 290 amending the Criminal Code had been adopted, a provision of which (section 259 a) defined the offence of "torture and other inhuman and cruel treatment". In that connection, he informed the Committee that no one in the Czech Republic had ever been accused and convicted of such an offence.

5. The Committee's suggestion that regular training of prison staff, police officers and members of the judiciary be carried out was being met by the relevant institutions. The training centre of the Czech prison authorities prepared prison staff for responsible behaviour in the exercise of their tasks. The Ministry of the Interior had its own system of training, which included specialized schools for the Czech police force, and the Ministry of Justice trained members of the judiciary in its Justice Institute for Further Training.

6. When it had ratified the Convention against Torture in 1988, the former Czech and Slovak Federal Republic had not recognized the jurisdiction of the Committee under article 20 and had not made the declaration under article 22 recognizing the competence of the Committee to receive and consider communications from individuals who claimed to be the victims of torture. That situation had not changed under the Czech Republic, but for administrative, and not political or legal, reasons. That was indicated by the fact that the constitutional bodies of the Czech Republic were currently

in the process of ratifying, without any reservations, the Council of Europe's European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which the former Czech and Slovak Federal Republic had signed but not ratified.

7. Since the submission of the new initial report in May 1994, application decrees had been added to Act No. 293/1993 on detention and to Act No. 294/1993 amending Act No. 59/1965 on the deprivation of liberty. Those decrees specified the procedures governing pre-trial detention and imprisonment.

8. July 1994 had marked the adoption of Act No. 153 on the intelligence services of the Czech Republic and Act No. 154 on the security intelligence service. Persons working within those institutions must respect the reputation and dignity of others and must, in the exercise of their tasks, avoid causing harm to other persons.

9. When legislation was being drafted and implemented, special attention was paid to complying with the provisions of the Convention against Torture.

10. The administration was currently preparing the principles and draft of a completely new bill on imprisonment, based on resolution No. 427/1993 on the situation in the Czech prison system. Those principles would be considered by his Government in December 1994. The purpose of the principles and the bill was to take into account current developments in the Czech Republic and to reflect the experience gained from the penitentiary systems of the members of the Council of Europe. Certain provisions of the new bill would be in keeping with the international instruments binding on the Czech Republic. An adequate prison staff and professional training, and sufficient prison capacity and funds would be required for the new bill to be implemented properly.

11. Act No. 555/1992 on the prison service and court guards, to which reference was made in paragraph 7 of the initial report, was a major improvement: it had abolished the former "Corps of Corrective Education", replacing it by a penitentiary service consisting of prison guards, court guards and an administrative service.

12. The task of the prison guards was to guard and accompany accused and convicted persons, ensure the security of buildings used for pre-trial detention and imprisonment and enforce discipline. The court guards were responsible for discipline and security in the court buildings and related premises, as well as in the Ministry of Justice. The administrative service was involved in economic, staff, training, organizational, health care and technical activities. The size of the civilian staff in the administrative service was growing (the prison and court guards would retain the status of an armed corps). Thus, an increasing number of educators, teachers, psychologists, sociologists and health-care personnel were working with accused and convicted persons.

13. Between 1990 and 1992, the members of the "Corps for Corrective Education", judges and prosecutors had been screened to remove from their ranks persons who had discredited themselves in the past through their

behaviour and acts and, as a result, 25 per cent of staff had been replaced. The recruitment of new staff placed heavy emphasis on education and training. Secondary schooling had to be completed for lower positions and university degrees were required for higher and specialized positions.

14. Detention and prison facilities had to be supervised to ensure that the rights set out in the Convention against Torture were not being violated. To that end, an independent department had been created, reporting directly to the Minister of Justice, which consisted of a unit to supervise places of detention and an inspection unit. Its purpose was to ensure that there were no violations of the law during detention and imprisonment.

15. The new Act on the enforcement of prison sentences would provide for parliamentary supervision of detention and imprisonment.

16. Lastly, he hoped that the members of the Committee would visit his country soon so that they could see for themselves how the Convention was being implemented in practice.

17. Mr. BURNS (Country Rapporteur) said that it had been a pleasure to read the report of the Czech Republic and to see the efforts that had been made to implement the Committee's suggestions. The report was an excellent document and very up to date, and he had only a few brief points to make, the first of them being that it would be useful to have a core document devoted solely to the Czech Republic.

18. The Czech Republic was to be applauded for being one of the half a dozen countries in the world that had specifically defined torture as a crime in its domestic legislation. According to the Czech delegation, international human rights instruments were incorporated directly into domestic law; that presumably meant that they did not require legislation in order to come into force, and he would like to know whether both substantive and procedural provisions were incorporated or whether only the former were concerned.

19. With regard to the procedure for arrest, he asked whether a person could be held incommunicado and, if so, for how long; how long a person could be held in custody prior to being brought before a judge; and whether habeas corpus or an equivalent existed whereby it was possible for a person who had been detained to demand to be brought before a judge to decide whether or not he was being wrongfully held.

20. He sought information on how judges were appointed and removed and inquired whether the jurisdiction of the military police was confined to military personnel and offences or whether it was broader.

21. He was pleased to note that the State acknowledged responsibility for the wrongful acts of public officials and would pay compensation, and he wondered whether such compensation was applied for in a juridical or other form of proceeding. With regard to the ombudsman, he hoped that that nascent institution would soon become part of Parliament.

22. It was not clear to him what was meant by the phrase "no case of torture or other situation covered by the Convention has been disclosed by the Public Prosecutor of the Czech Republic" in paragraph 31, and he wondered how the statement that there had been no known incidents of torture could be reconciled with the case reported by Amnesty International and which Mr. Yakovlev would take up in greater detail.

23. He would like to know whether asylum-seekers were able to appeal against the denial of refugee status and how the Czech Republic dealt with persons liable to expulsion, deportation or refoulement as a result of being denied such status in the Czech Republic; how the Czech Government ensured that asylum-seekers were informed of their right to apply for refugee status and whether the Czech delegation could describe the procedure used by border guards when faced with asylum-seekers. In that connection, he asked whether border guards received specific instructions on the treatment of refugees and whether they had been made aware of the need to respect article 3 of the Convention. He also asked whether the Czech Republic had had any contact with the United Nations High Commissioner for Refugees in that regard.

24. The Czech Republic had re-admission agreements with a number of other countries and, in so far as they related to asylum-seekers who might be returned to other countries, he asked how the Czech Republic ensured that persons returned to another country could apply for refugee status there, whether such a possibility was incorporated in the agreements or whether it was part of a bilateral administrative arrangement and whether the Czech Republic had taken steps to guarantee that persons subject to refoulement to another country were not once again expelled or returned.

25. Lastly, he asked what the procedure was for a prisoner who wished to complain about a prison official.

26. Mr. YAKOVLEV (Country Rapporteur) said he fully agreed with the previous speaker's evaluation of the high quality of the report, which was not unrelated to the overall flourishing of democracy in the Czech Republic. Like Mr. Burns, he welcomed the inclusion of a definition of torture in the Czech legislation which, he was pleased to note, specifically included questions of police conduct (para. 37, subpara. (a)).

27. He wished to ask about two specific cases. The first related to a report by Amnesty International, in June 1994, concerning a 17-year-old, Jaroslav Jonáš, alleged to have committed suicide on 19 September 1993 while in detention in Ostrava. The case was reportedly being conducted by the Ostrava Prosecutor's Office; he would like to know whether any further information was available about it.

28. The second case, mentioned in paragraph 83 of the initial report, related to criminal proceedings against three officers from the Praha-Pankrác prison. While it was clear from the information given that the system of investigation and prosecution in cases of ill-treatment was effective, he would like the Committee to be given some up-to-date information on the case in question.

29. Mr. SORENSEN said that he endorsed the congratulations to the Czech delegation on its excellent report. He was impressed by the work carried out in the Czech Republic, whose legal system must have become one of the best in the world.

30. He recognized the considerable efforts made towards the education and training of police and prison personnel and the improvement of general standards in that regard, and had noted, from the oral introduction of the report, that it had been found necessary to dismiss some 25 per cent of the former personnel.

31. He was slightly puzzled, however, by the statement, in paragraph 69, that nothing in the internal legislation prevented the full introduction of textbooks and information on prohibition of torture in training programmes; it surely went without saying that nothing should obstruct what was, in fact, a duty. He would like to know what information and training was provided for medical staff in that regard.

32. In connection with article 14 of the Convention, referred to in paragraphs 86-88* of the report, in cases of victims of unlawful acts; the courts in many countries dealt only with monetary compensation; but redress and rehabilitation were important, too, especially after a change of regime, a situation in which many people sought redress and many were in need of rehabilitation, especially medical. He would like to know what measures were available in that regard.

33. He also asked whether the Czech Republic contributed to the United Nations Voluntary Fund for Victims of Torture and, if it did not, he invited it to do so.

34. Mr. EL IBRASHI, having associated himself with the comments by previous speakers on the quality of the Czech Republic's initial report, said that, with regard to complaints of the sort mentioned in paragraph 27 of the report, he would appreciate details of the relationship between the investigator and the police, and would like to know which of them initiated the inquiries. According to paragraph 30, a draft act (bill) on the establishment of the institution of ombudsman in the Czech Republic was being revised in the light of discussions and comments; he would like to be informed about the progress made. With reference to paragraph 31, he would appreciate further details about the various types of report mentioned, including the periodicity of inspections and what follow-up action was taken.

35. With regard to paragraph 33, he would like to have more information on the number and status of non-governmental organizations in the Czech Republic, including details of the form and impact of their reports. According to paragraph 41, the provisions of section 18 of Act No. 123/1992, preventing the expulsion of an alien to a State where his life or freedom would be

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* Reviser's note: In the English text only, there are two paragraphs 83. Subsequent paragraphs are thus wrongly numbered.

threatened, did not apply if an alien was posing a threat to the security of the State or had been convicted of a particularly serious criminal offence. The reference to a serious criminal offence was straightforward enough; he wondered, however, what authority was empowered to declare a threat to State security, and whether there was a right of appeal against such a decision.

36. Mr. BEN AMMAR said that he, too, greatly appreciated the report before the Committee, and associated himself with the previous speakers' questions and comments. He would like to know what legal measures existed to prevent the practice of torture and to ensure systematic review, pursuant to articles 1 and 11 of the Convention respectively.

37. Although the report dealt in some detail with the prison regime, there was little information about places of detention under the control of the police and the armed forces. He would appreciate further information in that regard, including such matters as the periods of custody and the contacts permitted with relatives, lawyers and doctors. He also wished to know whether the country's non-governmental organizations were independent of the public authorities, whether they were associated with the protection of persons, and whether any of them were allowed to visit places of detention.

38. Mr. GIL LAVEDRA said that he agreed with the previous speakers concerning the quality of the initial report of the Czech Republic, and welcomed the legislative changes introduced in that country. The report did, however, lack information on one important matter, namely, conditions relating to detention and the right of detainees to medical examination and contact with relatives.

39. According to paragraph 37, subparagraph (b), of the report, a police officer had the duty to refuse to obey a superior's order when to do so would mean committing a criminal offence; he wondered from what positive rule that duty stemmed. Turning to paragraph 64, he was struck by the reference to section 11, paragraph 1, of the Code of Criminal Procedure, according to which penal prosecution was not admissible in cases where it was so ordered by the President of the Republic in pursuing his right to grant pardon or amnesty. There was a difference between those two prerogatives, since pardoning a person surely meant that the latter had already been prosecuted. He would appreciate clarification of that point.

40. Lastly, he was puzzled by the figures given in subparagraphs (a), (b) and (c) of paragraph 85, which did not add up, either as percentages or absolute figures, to the total of 2,448 complaints.

41. Mrs. ILIOPOULOS-STRANGAS, having endorsed the comments of the previous speakers on the quality of the report, said that, in connection with paragraph 41, she, too, wondered who was competent to declare that an alien was posing a threat to the security of the State. She also wondered whether it might be possible, under Czech legislation, for a person to be at risk of extradition to a State not a party to the Convention and thus not bound by its article 3.

42. Mr. REGMI said that he, too, was impressed by the excellence of the report. With regard to the country's judicial system, he would like to know how judges were appointed, how their independence was guaranteed, and what provision existed in the basic law to govern the removal of judges in cases of incompetence or failure to carry out their duties. He also asked how, in criminal cases, the presence of a lawyer of the accused's choice was guaranteed.

43. The CHAIRMAN thanked the representative of the Czech Republic for the introduction of its initial report, and invited him to return, at the Committee's next meeting, to reply and comment on the Committee's questions and observations.

The public meeting rose at 11.15 a.m.